

REMARKS

This is in response to the non-final Office Action mailed December 27, 2007. Claims 90, 95, 96, 105, and 117 are amended. Claims 90-102 and 105-115, 117, and 118 are pending. Reconsideration and allowance are requested for the following reasons.

Claims 90-98 and 100-118 are rejected under 35 U.S.C. § 103(a) as being unpatentable over Iliff, U.S. Patent No. 6,234,964, in view of Lloyd et al., U.S. Patent No. 6,080,106. This rejection is respectfully traversed, and reconsideration is requested.

A. Claim 118

Claim 118 recites a system for monitoring a patient with a chronic condition and establishing a communication to a remote office. Claim 118 requires that the processing computer determines a requirement for an exception by analyzing points associated with the answers from the patient by totaling the points from two or more answers and comparing the total with a threshold.

While the correctness of the characterization of Iliff and Lloyd provided in the Office Action is not conceded, the Office Action acknowledges that Iliff and Lloyd fail to teach that the processing computer determines a requirement for an exception by analyzing points associated with the answers from the patient by totaling the points from two or more answers and comparing the total with a threshold, as required by claim 118.

However, the Office Action suggests that it would have been obvious to try determining a requirement for an exception by analyzing points associated with the answers from the patient by totaling the points from two or more answers and comparing the total with a threshold because Lloyd allegedly teaches the use of one point to issue an exception. Furthermore, the Office Action argues that because Lloyd teaches use of one point to issue an exception, it would be obvious to try adding points together to issue an exception.

The Office Action appears to interpret the “answers” and “data” of Lloyd as disclosing the “points” required by claim 118. Lloyd describes how the processor “transmits the recorded answers through communications link (60) to the monitoring staff (70). The monitoring staff, upon receiving the answers and data, may then alter the question series and/or download new questions, target values, and minimum and

maximum values, consistent with his or her evaluation of the patient's health." Lloyd, col. 7, 21-25. Furthermore, Lloyd describes how "the answers and data are examined by the monitoring staff..." Lloyd, col. 7, lines 55-56. The "data" cited in these passages appears to be objective patient measurements such as weight and blood pressure. *See e.g.*, Lloyd, claim 1.

However, it would not be obvious to try totaling answers of the type described in Lloyd to issue an exception or obvious to try totaling patient measurements of the type described in Lloyd to issue an exception. This is because adding such answers together or adding such patient measurements together leads to totals that are not useful in determining whether to issue an exception. For example, simple addition of answers together may not mean that the patient is experiencing a condition that requires medical attention. For example, assume that low hunger, considerable thirst, and feeling hot are symptoms indicative of an infection that requires medical attention. In this example, the monitoring apparatus may ask the patient three questions:

- 1) "how hungry are you?"
- 2) "how thirsty are you?" and
- 3) "how hot do you feel?"

Furthermore, the monitoring apparatus may allow the patient to answer these questions based on a scale of 1-5. In a first scenario, the patient may answer all three questions with the number 3, for a total of 9. In a second scenario, the patient may answer 1 to the first question, 4 to the second question, and 4 to the second question, for a total of 9. However, the symptoms in the first scenario are not indicative of infection whereas the symptoms in the second scenario are indicative of infection. Therefore, a simple answer total does not mean that the patient is experiencing a condition that requires medical attention. In other words, the simple answer total is not a useful result. The same can be said for adding patient measurements together.

Because totaling such answers together leads to results that are not useful, it would not be obvious to try totaling answers together to issue an exception. Similarly, because totaling such patient measurements together leads to results that are not useful, it would not be obvious to try adding patient measurements together to issue an exception.

Because it would not be obvious to try totaling such answers together to issue an exception and it would not be obvious to try adding patient measurements together to issue an exception, and because neither Iliff nor Lloyd teaches or suggest adding answers or patient measurements together to issue an exception, Iliff in view of Lloyd does not teach or suggest totaling points from two or more answers and comparing the total with a threshold, as required by claim 118. Because Iliff in view of Lloyd does not teach or suggest this requirement, Iliff in view of Lloyd does not provide a prima facie case of obviousness under 35 U.S.C. § 103(a) against claim 118. For at least this reason, Applicants request the withdrawal of the rejection of claim 118 under 35 U.S.C. § 103(a).

B. Claim 90 and associated dependent claims

Applicants have amended independent claim 90 to include the requirement that the processing computer uses a threshold and a total of points associated with two or more of the answers to determine whether to issue an exception.

Neither Iliff nor Lloyd explicitly discuss the requirement of using a total of points associated with two or more answers. For instance, Lloyd does not discuss totaling points associated with two or more answers. Rather, Lloyd merely mentions that the answers and data are examined by monitoring staff. *See* Lloyd, col. 7, lines 55-56. Furthermore, Iliff does not discuss using a total of points associated with two or more answers. Rather, Iliff discusses using a “critical curve” and issuing an exception when the “critical curve” reaches a “critical point.” *See* Iliff, col. 21, lines 2-14. Iliff does not suggest using a total of the points associated with two or more answers to generate the “critical curve.”

The requirement of claim 90 that the processing computer uses a threshold and a total of points associated with two or more of the answers to determine whether to issue an exception is not the same as the requirement in claim 118 that the processing computer determines a requirement for an exception by totaling the points from two or more answers and comparing the total with a threshold. Nevertheless, the reasoning applied above with regard to this element is applicable. In essence, it would not be obvious to try to total two or more answers of the type discussed in Lloyd because totaling two or more

such answers may not lead to medically useful information. For this reason, Iliff in view of Lloyd does not render this requirement of claim 90 obvious to try.

Consequently, Iliff in view of Lloyd does not provide a basis for a prima facie case of obviousness against claims 90 or its dependent claims. Accordingly, Applicants respectfully request the withdrawal of the rejection of claims 90-98 and 100-102 under 35 U.S.C. § 103(a).

C. Claim 99

The current Office Action rejected claim 99 under 35 U.S.C. § 103(a) as being unpatentable over Iliff in view of Lloyd in further view of Drinan et al, U.S. Patent 6,354,996 B1. Claim 99 is dependent on claim 90 and inherits all elements of claim 90. As discussed above, neither Iliff nor Lloyd teaches or suggests all elements of claim 90. Furthermore, there is no suggestion that Drinan teaches or suggests any of the missing elements. Consequently, the Office Action does not present a prima facie case of obviousness under 35 U.S.C. § 103(a) for claim 99. Applicants respectfully request the withdrawal of the rejection of claim 99 under 35 U.S.C. § 103(a).

D. Claim 105 and associated dependent claims

Applicants have amended independent claim 105 to include the requirement of determining, at the remote processing computer, a requirement for an exception using a threshold and a total points associated with two or more of the answers. For the reasons stated above with regard to claim 90, Iliff in view of Lloyd does not teach this requirement or render this requirement obvious to try. Accordingly, Applicants respectfully request the withdrawal of the rejection of claims 105-115 under 35 U.S.C. § 103(a).

E. Claim 117

Applicants have amended independent claim 117 to require the processing computer to use a threshold and a total of points associated with two or more of the answers to determine whether to issue an exception. For the reasons stated above with regard to claim 90, Iliff in view of Lloyd does not teach this requirement or render this

requirement obvious to try. Accordingly, Applicants respectfully request the withdrawal of the rejection of claim 117 under 35 U.S.C. § 103(a).

Conclusion

Claims 90-102 and 105-115, 117, and 118 remain pending in the application. These claims are allowable for at least the reasons set forth above (other reasons may exist, and Applicants reserve the right to make additional arguments advancing these arguments in the future). Accordingly, Applicants respectfully request prompt reconsideration, allowance, and passage of the application to issue. Should the Examiner have any questions or concerns, the Examiner is urged to contact the undersigned by telephone at the number below to expeditiously resolve this matter.

Respectfully submitted,
MERCHANT & GOULD P.C.
P.O. Box 2903
Minneapolis, Minnesota 55402-0903
(612) 332-5300

Date: June 20, 2008

/Albert W. Vredevelde/
Name: Albert W. Vredevelde
Reg. No.: 60,315